

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

-----	:	CASE NO. 1:12 CV 00525
ANDRE BOYNTON,	:	
	:	
Petitioner,	:	<u>MEMORANDUM OF OPINION AND</u>
	:	<u>ORDER ADOPTING THE</u>
-vs-	:	<u>MAGISTRATE JUDGE'S REPORT AND</u>
	:	<u>RECOMMENDATION AND GRANTING</u>
MICHAEL SHEETS, Warden,	:	<u>THE RESPONDENT'S MOTION TO</u>
	:	<u>DISMISS</u>
	:	
Respondent.	:	
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UNITED STATES DISTRICT JUDGE LESLEY WELLS

On 27 May 2012, this matter was referred to United States Magistrate Judge Kenneth S. McHargh, pursuant to 28 U.S.C. § 636(b)(1), for a report and recommendation as to *pro se* petitioner Andre Boynton's petition for the Writ of Habeas Corpus. (Doc. 3). The respondent thereafter filed a motion to dismiss, on the ground that the petition is time-barred pursuant to the Antiterrorism and Effective Death Penalty Act of 1986. (Doc. 7). The petitioner filed a response in opposition. (Doc. 8).

The magistrate judge considered the respondent's motion and the parties' briefs and recommended that the motion be granted, because the limitations period has expired. (Doc. 9). The magistrate judge reasoned that because the petitioner's conviction became final on 14 November 2010 and the statute was tolled for 43 days during the pendency of his motion for a delayed appeal, the limitations period expired on 28 December 2011. (Doc. 9 at 6-10). Therefore, the petitioner's habeas petition,


filed 26 February 2012, came too late. (Doc. 9 at 8-9). The magistrate judge also determined that equitable tolling should not excuse his untimely filing, because the petitioner did not cite the sort of extraordinary circumstances that would justify its application. (Doc. 9 at 9-10). It was therefore recommended that the petition be dismissed.

The petitioner was advised that failure to file objections to this recommendation within fourteen days of its receipt would result in a waiver of his right to appeal the Court's order. (Doc. 9 at 10). The report was mailed to the petitioner on 16 October 2012. Thus, allowing three days for delivery pursuant to Fed. R. Civ. P. 6(d), objections were due by 2 November at the latest. The petitioner did not file timely objections. Instead, on 30 November 2012, he filed a motion for leave to file *instanter*, maintaining that his limited access to the prison law library and the delay in delivery prevented a timely filing. (Doc. 10). While the Court recognizes the difficulty placed upon a litigant in the petitioner's position, he does not describe circumstances to justify his tardiness in this instance. In any event, the untimely objections raised by the petitioner are little more than a restatement of those arguments already considered and properly rejected by the magistrate judge.

Therefore, because this Court finds that the report and recommendation is well-reasoned and without error, it adopts it in its entirety. The respondent's motion to dismiss is granted.

IT IS SO ORDERED.

Date: 1/2/2013

  
UNITED STATES DISTRICT JUDGE